

JOHN NJENGA KAMAUAPPLICANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence in criminal case Number 4510 of 2010 in the Chief Magistrate's Court at Kibera – Mr. M. Muya (CM) on 6th June 2012)

RULING

1. This is a Notice of Motion dated 28th June 2012, brought under **Section 356 and 357** of the **Criminal Procedure Code**. The applicant, John Njenga Kamau seeks to be admitted to bail/bond pending the hearing of appeal No. **165 of 2012**, that he has filled in the High Court. The appeal stems from a conviction in **CM Cr. Case No. 450 of 2010** by Mr. Muya, the Chief Magistrate Makadara law court. In the said **CM Cr. Case No. 450 of 2010**, the applicant was tried and convicted for the offence of stealing contrary to **Section 275** of the **Penal Code**, and was sentenced to serve 18 months imprisonment without option of fine.
2. The main thrust of this application, as urged by learned counsel Mr. Kariuki on behalf of the applicant, is that the applicant's appeal has overwhelming chances of success. His submissions were that the applicant, who was a driver, was directed by his employer to transport cargo that was in the custody of a clerk, and deliver it to one Linus Otolim their client. His duty was limited to transporting the cargo on behalf of his employer and delivering it to the client, that was what he did. The lorry registration No. KAM 917 V make Tata which carried the cargo belonged to his employer **DW2**.
3. The learned state counsel Miss Muturi conceded the application because she agreed that those were the facts as evinced from the proceedings.
4. I have perused the proceedings and respectfully agree with the two learned counsel's views. The learned trial magistrate does not appear to have given due consideration to the evidence tendered by the defence.
5. The most important issue to be considered in the granting of bail/bond pending the hearing and determination of an appeal, is if the filed appeal has overwhelming chances of success. If it does there is no justification for depriving the applicant of his liberty.
6. The previous good conduct of the applicant during trial, or the fact that he looks after his ailing parents, as urged by learned counsel Mr. Kariuki, are not exceptional or unusual circumstances to be considered by the court for purposes of granting bail/bond pending the determination of appeal.
7. Without delving into the merits and demerits of the pending appeal, **I find that the application before me is meritorious.**
8. On the terms of the bond granted, although the applicant lost the presumption of innocence upon conviction, in the circumstances of this case I reinstate the bond terms that were in operation while he was on trial in the subordinate court.
9. The application is therefore allowed. The applicant may therefore be released on a bond of kshs.500,000/= with one surety of like amount, and in the alternative he may be released on cash bail of Kshs.300,000/-

SIGNED DATED and DELIVERED in open court this *15th* day of *August 2012*.

L. A. ACHODE

JUDGE